also indicated that the Administration could not support either the Ganske provision or the recent variation.

In sum, I think that this issue needs to be more fully considered by the Congress, and in particular, by the Senate Judiciary Committee. I believe that passage of the Ganske provision, or the recent Frist modification, without adequate consideration of its long-term implications for intellectual property rights would be extremely unwise.

Let me hasten to add that I understand your special interest in this issue, and I am sympathetic to the need to examine further the impact of medical process patents. My study of the Singer case, in which the patent was overturned, leads me to believe that the Patent and Trademark Office's procedures could be improved in the area of medical patents. This is something that I will be pursuing, and I welcome your input into this process.

Sincerely,

ORRIN G. HATCH,
Chairman.

Mr. HATCH. Mr. President, in closing, I must reiterate my profound disappointment and my objections to including this medical process patents provision in the omnibus appropriations bill. This is a serious matter and a serious precedent. We will have to look very carefully at its implications in the months to come.

ALTERNATIVE MEANS OF DISPUTE RESOLUTION ACT OF 1996

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4194 which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4194) to reauthorize alternative means of dispute resolution in the Federal administrative process, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 5421

(Purpose: To make amendment and to establish concurrent jurisdiction for purposes of hearing bid protests between the district courts of the United States and the United States Court of Federal claims and sunsetting bid protest jurisdiction of the district courts of the United States and other purposes)

Mr. GRASSLEY. Senator COHEN has an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for Mr. COHEN, proposes an amendment numbered 5421.

Mr. GRASSLEY. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert the following:

SEC. 12. JURISDICTION OF THE UNITED STATES COURT OF FEDERAL CLAIMS AND THE DISTRICT COURTS OF THE UNITED STATES: BID PROTESTS.

(a) BID PROTESTS.—Section 1491 of Title 28, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) in subsection (a) by striking out paragraph (3); and

(3) by inserting after subsection (a), the following new subsection:

''(b) (1) Both the United States Court of Federal Claims and the district courts of the United States shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement. Both the United States Court of Federal Claims and the district courts of the United States shall have jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded.

''(2) To afford relief in such an action, the courts may award any relief that the court considers proper, including declaratory and injunctive relief except that any monetary relief shall be limited to bid preparation and proposal costs.

''(3) In exercising jurisdiction under this subsection, the courts shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.

''(4) In any action under this subsection, the courts shall review the agency's decision pursuant to the standards set forth in section 706 of title 5.''

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on December 31, 1996 and shall apply to all actions filed on or after that date.

(c) STUDY.—No earlier than 2 years after the effective date of this section, the United States General Accounting Office shall undertake a study regarding the concurrent jurisdiction of the district courts of the United States and the Court of Federal Claims over bid protests to determine whether concurrent jurisdiction is necessary. Such a study shall be completed no later than December 31, 1999, and shall specifically consider the effect of any proposed change on the ability of small businesses to challenge violations of federal procurement law.

(d) SUNSET.—The jurisdiction of the district courts of the United States over the actions described in section 1491(b)(1) of title 28, United States Code, (as amended by subsection (a) of this section) shall terminate on January 1, 2001 unless extended by Congress. The savings provisions in subsection (e) shall apply if the bid protest jurisdiction of the district courts of the United States terminates under this subsection.

(e) SAVINGS PROVISIONS.—

(1) ORDERS.—A termination under subsection (d) shall not terminate the effectiveness of orders that have been issued by a court in connection with an action within the jurisdiction of that court on or before December 31, 2000. Such orders shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by a court of competent jurisdiction or by operation of law.

(2) PROCEEDINGS AND APPLICATIONS.—(A) A termination under subsection (d) shall not affect the jurisdiction of a court of the United States to continue with any proceeding that is pending before the court on December 31, 2000.

(B) Orders may be issued in any such proceeding, appeals may be taken therefrom, and payments may be made pursuant to such orders, as if such termination had not occurred. An order issued in any such proceeding shall continue in effect until modified, terminated, superseded, set aside, or revoked by a court of competent jurisdiction or by operation of law.

(C) Nothing in this paragraph prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that proceeding could have been discontinued or modified absent such termination.

''(f) NONEXCLUSIVITY OF GAO REMEDIES.—In the event that the bid protest jurisdiction of the district courts of the United States is terminated pursuant to subsection (d), then section 3556 of title 31, United States Code, shall be amended by striking ''a court of the United States or'' in the first sentence.

Mr. COHEN. Mr. President, the amendment I am offering this morning to H.R. 4194, a bill to reauthorize alternative means of dispute resolution in the Federal administrative process, is the result of a compromise reached last night with the other house.

The amendment deals with the issue of bid protest jurisdiction in the Federal district courts and the U.S. Court of Federal Claims. The amendment will expand the bid protest jurisdiction of the Court of Federal Claims. It should be noted, however, that this amendment in no way expands the jurisdiction of the Court of Federal Claims beyond bid protests or changes the standard of review in any other area of jurisdiction of the Court of Federal Claims.

Currently, the Court of Federal Claims only has jurisdiction over bid protests which are filed before a contract award is made. My amendment provides for both pre- and post-award jurisdiction. The Federal district courts also have jurisdiction over bid protests. Prior to a 1969 Federal court decision, however, the Federal district courts had no jurisdiction over Federal contract awards. A Federal district court, in Scanwell Lab., Inc. versus Shaffer, held that a contractor can challenge a Federal contract award in Federal district court under the Administrative Procedures Act.

It is my belief that having multiple judicial bodies review bid protests of Federal contracts has resulted in forum shopping as litigants search for the most favorable forum. Additionally, the resulting disparate bodies of law between the circuits has created a situation where there is no national uniformity in resolving these disputes. That is why I have included provisions in this amendment for studying the issue of concurrent jurisdiction and have provided for the repeal of the Federal district courts' Scanwell jurisdiction after the study is complete in 2001.

The chamber of commerce fully supports this language as do our colleagues in the other chamber.

I would like to express my deep gratitude for the willingness of my colleagues and their staffs in both houses to work with me and my staff to develop this compromise.

Mr. LEVIN. Mr. President, we all want a government that works better and costs less. In the rush of closing business in this Congress, I am pleased that the Senate has made time for legislation authored by myself and Senator CHUCK GRASSLEY to encourage faster, less costly ways to resolve disputes with the Federal Government. This bill, which has gone through several versions, is now before us as H.R. 4194, and has been approved by both sides of the aisle in the Senate and the House. I am hopeful that, by the end of the day, this legislation will be on its way to the President.

It's a fact of life that many people have disputes with the Federal Government. In the late 1980's, of the 220,000 civil cases filed in Federal court, more than 55,000 involved the Federal Government in one way or another. Resolving these disputes costs taxpayers billions of dollars.

Resolving them before they become courtroom dramas is one way to make a dent in this billion-dollar drain on taxpayer funds. Mediation, arbitration, mini trials and other methods offer cheaper, faster alternatives to courtroom battles.

That's why, 6 years ago, Senator GRASSLEY and I cosponsored the Administrative Dispute Resolution Act of 1990. It is why we have teamed up again this year to reauthorize and fine-tune that Act and make it a permanent part of U.S. law. Perhaps the most important improvement we would make is to expand the alternative dispute resolution or ADR tools available to Federal agencies by making binding arbitration a more attractive option. The bill takes two steps to do so. First, it would eliminate a one-way escape clause that allowed Federal agencies, but not private parties, unilaterally to vacate a binding arbitration award that disadvantaged the government. In the 5 years this escape clause has been on the books, no one has ever agreed to an arbitration proceeding with the Government on this basis. Eliminating this unilateral escape clause is expected to encourage more private parties to agree to use binding arbitration as a cost-saving alternative to civil litigation. Second, the bill would put into place several safeguards to protect the United States from improper or unwise use of this ADR technique, including requiring agencies to think through, ahead of time and in writing, when binding arbitration should be used; requiring every agreement to use binding arbitration to be in writing and to specify the maximum dollar award that an arbitrator may award against the United States; and ensuring that agency officials cannot even offer to use binding arbitration unless the official already has authority to settle the matter.

Also, to ensure that binding arbitration remains a voluntary procedure, the bill maintains the provision in the ADR law, 5 U.S.C. 575(a)(3), which prohibits Federal agencies from requiring individuals to agree to use binding arbitration to settle disputes as a condition of entering into a contract or obtaining a benefit. Both the bill sponsors and the authorizing committees intend this provision to include prohibiting an agency from requiring a party to submit to binding arbitration as a condition of Federal employment or to relinquish rights under other laws such as the Civil Rights Act. It is not the intent of the bill to coerce anyone into using binding arbitration.

The bill makes a number of other refinements in the ADR law as well, including clarifying the confidentiality of ADR proceedings; clarifying agency authority to hire mediators and other ADR neutrals on an expedited basis; allowing agencies to accept donated services from State, local and tribal governments to support an ADR proceeding; adding an explicit authorization for appropriations; removing a ban on Federal employees' electing to use ADR methods to resolve certain personnel disputes; and eliminating special paperwork burdens on contractors willing to use ADR to resolve small claims against the Government under the Contract Disputes Act. The bill would also reassign the task of encouraging and facilitating agency use of ADR methods from the Administrative Conference of the United States, which has been terminated due to a lack of appropriations, to an agency or interagency committee to be designated by the President.

In addition to reauthorizing the ADR law, the bill also includes the Levin-Grassley amendment to reauthorize the Negotiated Rulemaking Act of 1990. The Negotiated Rulemaking Act is another reform effort that seeks to interject common sense and cost savings into the way the Federal Government does business. In essence, it allows a Federal agency to form an advisory committee with its regulated community, public interest groups and other interested parties to draft regulations that everyone can support and live by.

As its name implies, the point of the law is to get parties to negotiate with each other and the Federal Government to devise sensible, cost effective rules. No one is required to participate in a negotiation, and no one gives up their rights by agreeing to negotiate. It is a voluntary, rather than a mandatory, process.

Agencies and others have discovered that, in many rulemaking situations, negotiation beats confrontation in terms of cost, time, aggravation, and the ability to develop regulations that parties with very different perspectives can accept. One industry participant in a negotiated rulemaking involving the Clean Air Act put it this way: ''It's a better situation when people who are adversaries can sit down at the table and talk about it rather than throwing bricks at each other in courtrooms and the press.'' An environmental journal reached the same conclusion, summing up a negotiated rulemaking involving the Grand Canyon with the headline, ''See You Later, Litigator.'' The Washington Post has called negotiated rulemaking ''plainly a good idea,'' while the New York Times has called it ''an immensely valuable procedure that ought to be used far more often.''

Like ADR, the bill would make the Negotiated Rulemaking Act a permanent fixture in Federal law, while fine-tuning some provisions. The improvements include facilitating agency hiring of neutrals, called convenors and facilitators, on an expedited basis; providing an explicit authorization for appropriations; clarifying the authority of agencies to accept gifts to support negotiated rulemaking proceedings; and reassigning the responsibility for facilitating and encouraging agency use of negotiated rulemaking from the Administrative Conference of the United States, which has been terminated, to an agency or interagency committee to be designated by the President.

If enacted during this Congress, the bill would avoid a lapse in the negotiated rulemaking law which is otherwise scheduled to expire in November. That is why it is so important to pass this legislation before Congress closes its doors for the year.

Finally, the bill would address the unrelated issue of judicial jurisdiction over procurement protests. At present, the Court of Federal Claims reviews some procurement protests, while the Federal district courts have responsibility for others. This overlapping authority has led to forum shopping and has resulted in unnecessary and wasteful litigation over jurisdictional issues. For this reason, the January 1993 report of the Acquisition Law Advisory Panel (the so-called section 800 Panel) recommended that:

> There should be only one judicial system for consideration of bid protests and that forum should have jurisdiction to consider all protests which can now be considered by the district courts and by the Court of Federal Claims. * * * The Court of Federal Claims should be the single judicial forum with jurisdiction to consider all protests that can presently be considered by any district court or by the Court of Federal Claims.

The original Senate bill contained a provision that would have implemented this recommendation and consolidated Federal court jurisdiction for procurement protests in the Court of Federal Claims.

The revised bill we are taking up today contains a compromise provision that would consolidate the jurisdiction of the Court of Federal Claims and the district courts. For 4 years, the consolidated jurisdiction would be shared by the Court of Federal Claims and the district courts. Each court system would exercise jurisdiction over the full range of bid protest cases previously subject to review in either system. After 4 years, the jurisdiction of the district courts would terminate, and the Court of Federal Claims would exercise exclusive judicial jurisdiction

over procurement protests. These provisions addressing Federal court jurisdiction over procurement protests would not affect in any way the authority of the Comptroller General to review procurement protests pursuant to chapter 35 of title 31, U.S. Code, and they would not affect the jurisdiction or standards applied by either the district courts or the Court of Federal Claims in any area of the law other than the procurement protests to which they are addressed.

Mr. President, I would like to thank Senator GRASSLEY, and in particular his staffer, Kolan Davis, for the hard work and leadership he has shown to renew and strengthen the ADR and negotiated rulemaking laws. I would also like to thank Senator GLENN, Senator COHEN, and Senator STEVENS, from the Governmental Affairs Committee for their continuing support. And this bill would not have had a chance without the hard work, persistence, and creative effort of three House Members and their outstanding staffs, and I would like to thank Congressmen JACK REED, George Gekas, and HENRY HYDE for getting this legislation to the floor despite a crowded calendar. This bill shows that bipartisanship is alive and functioning in this Congress.

Alternative dispute resolution methods and negotiated rulemaking provide new and better ways to conduct government business. They cost less, they're quicker, they're less adversarial, they develop sensible solutions to problems, and they free up courts for other business. They are two success stories in creating a government that works better and costs less.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the amendment be agreed to, the bill be deemed read for the third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The amendment (No. 5421) was agreed to.

The bill (H.R. 4194), as amended, read the third time, and passed.

OMNIBUS CONSOLIDATED APPROPRIATIONS, 1997

The Senate continued with the consideration of the bill.

Mr. GRASSLEY. Mr. President, I want to speak on the bill that is before us and just on a very small portion of it, the immigration bill. Obviously, the immigration bill is not just a small portion of the bill that is before us. It is perhaps one of the most important aspects of the bill before us. But what I meant was, I do not want to speak to the appropriations part of the bill.

I want to voice my strong support for the illegal immigration bill. This has been included, as everyone knows, as part of the continuing resolution. Senator SIMPSON, chairman of the Immigration Subcommittee, has worked diligently to bring this bill forward.

I am very pleased to have worked with him in creating solutions to the immigration problems that our country is facing today and, also, to take time to compliment Senator SIMPSON for the hard work that he has given for the people of his State of Wyoming to the United States as a Member of the U.S. Senate. He is now retiring. Those of us who have served with him on the Judiciary Committee, and a considerable amount of time together with him on the Immigration Subcommittee, are surely going to miss his leadership in this area.

This bill that is before us even under these extraordinary circumstances of its being part of the omnibus bill, even under those circumstances, should not detract from the hard work that has gone on in this Congress on this legislation that Senator SIMPSON has put together. He has produced a very strong bipartisan bill that will help us make a huge impact on the problems of illegal immigration.

In the last 2 years, Senator SIMPSON has made a great effort to deal with illegal immigration. We have done it by providing over $1 billion in new funding. But we all know that comprehensive legislation, like the bill before us, is necessary before we are ever going to be successful, or whether or not even that additional billion dollars in the war on illegal immigrants is going to be successfully spent.

Provisions of the bill provide for more effective deportation measures, increased border and investigative staffing, and stricter employment and welfare standards. It is exactly measures such as these that are necessary to combat the growing problem of illegal immigration.

Illegal immigration is an issue that has been in the forefront of public debate for some time right now. It is a growing problem that affects even the smallest towns in the Midwest.

The problem became graphic to me in January 1995 when an Iowa college student named Justin Younie was murdered by an illegal alien who had been removed from the State of Iowa once before because of his illegal status. Unfortunately, this particular illegal alien came back to the United States and to my State of Iowa without any problems. That is the case with so many illegal aliens returning, only this time, this person, this illegal alien, ended up committing murder. This person has since been convicted of this horrible crime. That does not bring back the life of Mr. Younie. But it does set the stage for a very important provision that I have in this bill allowing local law enforcement people to be involved in the arrest of an illegal alien if the only thing they have done wrong is being in this country illegally. I know it is not understandable to people who for the last 20 years, there has been a regulation saying that local law enforcement people cannot arrest an illegal alien just because they are here illegally. But that is the situation.

We have another example beyond this murder of the reach of illegal immigration, and it was featured in the U.S. News & World Report of September 13, 1996, and on the cover story. It addressed illegal immigration and its effects on the small town of Storm Lake, IA. Specifically, the article focused on the meatpacking industry, which, since its opening in 1982, has experienced a large influx of illegal immigrants. The effects on the town of Storm Lake have been very significant. Along with a population increase has come increased crime rates, increased education expenditures, racial problems, and economic concerns causing great resentment within the community.

According to the article, the increase in illegal immigrants to the town can